



GOVERNOR OF MISSOURI

JEFFERSON CITY

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GOVERNOR

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TO THE SECRETARY OF STATE OF THE STATE OF MISSOURI

Herewith I return to you Senate Committee Substitute for House Committee Substitute for House Bill No. 110 entitled:

AN ACT

To repeal sections 115.027, 115.607, 473.730, 473.733, and 473.737, RSMo, and to enact in lieu thereof six new sections relating to the selection of public officials.

I disapprove of Senate Committee Substitute for House Committee Substitute for House Bill No. 110. My reasons for disapproval are as follows:

Senate Committee Substitute for House Committee Substitute for House Bill No. 110 establishes a process to be followed when a vacancy occurs in the office of lieutenant governor. However, Senate Committee Substitute for House Committee Substitute for House Bill No. 110 designs an ill-conceived process warranting my disapproval.

The lieutenant governor is a constitutional statewide officer. He serves as president of the senate and, upon a vacancy in the office of governor, becomes governor. The lieutenant governor serves on the Board of Public Buildings, Board of Fund Commissioners, Missouri Development Finance Board, Tourism Commission, Missouri Housing Development Commission, in addition to many others. Several of these boards issue bonds, distribute tax credits and otherwise incur debt on behalf of the state.

Under Senate Committee Substitute for House Committee Substitute for House Bill No. 110, when a vacancy occurs in the office of lieutenant governor, "the governor shall, within thirty days [of the vacancy], issue a writ of election to fill the vacancy for the remainder of the term in which such vacancy occurred...." That election would occur at the next general election.

During any period when a vacancy exists in the office of lieutenant governor, Senate Committee Substitute for House Committee Substitute for House Bill No. 110 states that the "chief administrative assistant of the vacating lieutenant governor shall perform all ministerial duties

during the period of such vacancy.” The term “chief administrative assistant” is not defined in the legislation nor is there any process by which that person is to be identified or formally appointed to assume those duties. Instead, under the legislation, a nebulously described staffer of the exiting lieutenant governor would, by operation of law, assume the position until the next general election. Moreover, the legislation makes no provision in the event the “chief administrative assistant” is unwilling to serve or for replacing that person should he or she fail to fulfill those duties until the next general election. A statewide official, elected by the voters, should not be succeeded – even on a temporary and perhaps limited basis – by an individual who happens to hold an undefined, unelected staff position at the time of the vacancy. This is true if the vacancy occurs under benign circumstances but is even more problematic if the vacancy arises following a criminal investigation involving the office (and perhaps the “chief administrative assistant”) or is the result of an impeachment.

It is noted that the term “chief administrative assistant” is also found in Article IV, Section 11(c) of the Missouri Constitution. That provision provides that when a state officer, other than the lieutenant governor, is acting as governor, that officer’s regular elective office is not deemed vacant and the duties of that office are to be performed by the official’s “chief administrative assistant.” The term “chief administrative assistant” is not defined in the constitution. However, in an Article IV, Section 11(c) situation, the elected official serving as acting governor continues to hold his office, can identify and designate his chief administrative assistant and provide direction to that individual in the performance of the duties. None of that control would exist with a vacancy in the office of lieutenant governor under Senate Committee Substitute for House Committee Substitute for House Bill No. 110.

It is also concerning that the term “ministerial duties” is not defined in Senate Committee Substitute for House Committee Substitute for House Bill No. 110. Thus, the limits of the power of this staff member who would be acting as lieutenant governor, without oversight or supervision, are unknown except that, according to the legislation, the staff member may not discharge the lieutenant governor’s duties as president of the senate. As a result, it is left unresolved whether the staff member – who is neither elected nor appointed – would serve as a voting member on the various boards and commissions on which the lieutenant governor serves and thus be vested with the power to authorize bonds and other debt of the state. A staff member, anointed by happenstance to handle duties of a statewide elected official, should not be so empowered.

As mentioned above, Senate Committee Substitute for House Committee Substitute for House Bill No. 110 requires the president pro tempore to perform the duties of president of the senate when the office of lieutenant governor is vacant. As directed by Article IV, Section 10 of the Missouri Constitution, in his role as president of the senate, the lieutenant governor has the duty to “cast the deciding vote on equal division in the [state] senate.” Senate Committee Substitute for House Committee Substitute for House Bill No. 110 dubiously assumes that a constitutional duty of the lieutenant governor can be so informally transferred to the president pro tempore, but even setting aside that infirmity, the delegation made by this legislation would apparently permit the president pro tempore to vote twice when a senate vote is tied.



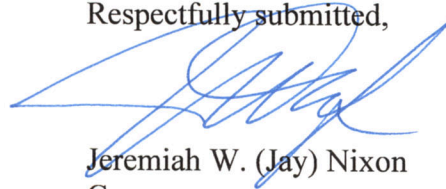
Senate Committee Substitute for House Committee Substitute for House Bill No. 110 will also deprive voters of an important role in the process of filling a vacancy in the office of lieutenant governor. Under the bill, the governor is mandated, within thirty days of a vacancy, to issue a writ of election and that election shall be held at the "next general election." There is no authority for the setting or conducting of a primary election. Thus, the nominee of each party will be selected not by the voters but rather by a narrow cast of party officials. If a statewide office is to be filled by election, the voters should have a meaningful role in determining their parties' candidates. Senate Committee Substitute for House Committee Substitute for House Bill No. 110 denies voters that opportunity.

Finally, Senate Committee Substitute for House Committee Substitute for House Bill No. 110 requires that the governor issue a writ of election regardless of when the vacancy occurs during the lieutenant governor's term. This causes a particularly odd result when the vacancy happens in the last two years of the lieutenant governor's term. In that situation, the election to fill the vacancy for the remainder of the term will happen at the same election that the voters will be electing the next lieutenant governor. The winner of the election to fill the vacancy will serve approximately two months - from the date the election is certified until early January - when the next lieutenant governor, elected on the same ballot, will be inaugurated. An election to select an individual to serve in office for such a short period of time is of extremely limited purpose and having the office of lieutenant governor appear twice on the same ballot would lead to voter confusion.

Empowering an undefined staff member of the vacating lieutenant governor or crafting a process that improperly transfers constitutional duties and requires unnecessary and confusing elections is a process that cannot receive my approval.

In accordance with the above stated reasons for disapproval, I am returning Senate Committee Substitute for House Committee Substitute for House Bill No. 110 without my approval.

Respectfully submitted,



Jeremiah W. (Jay) Nixon  
Governor